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MONTANA PROSECUTOR

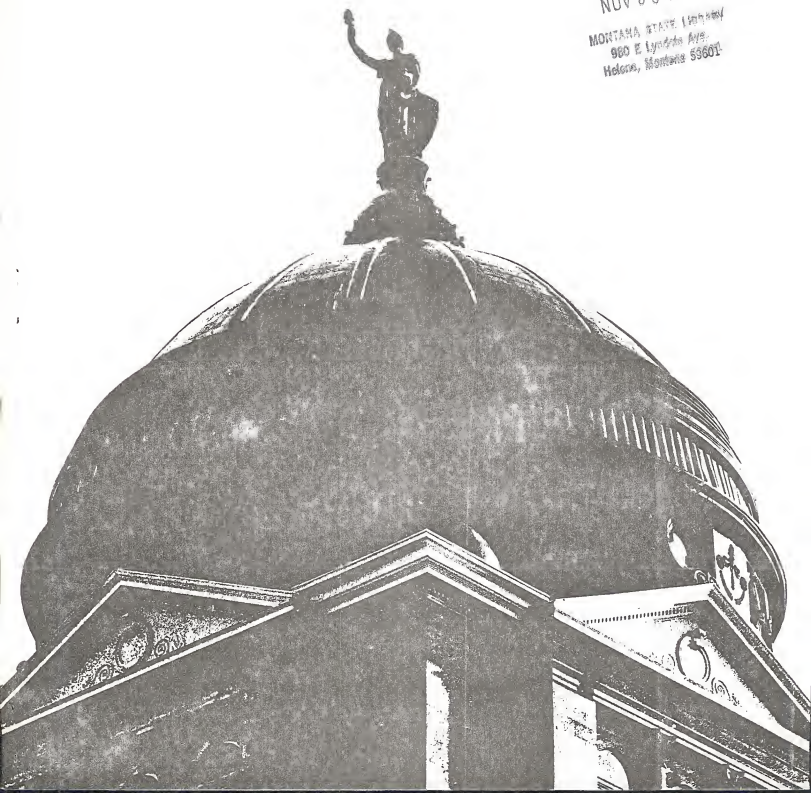
November/December, 1978

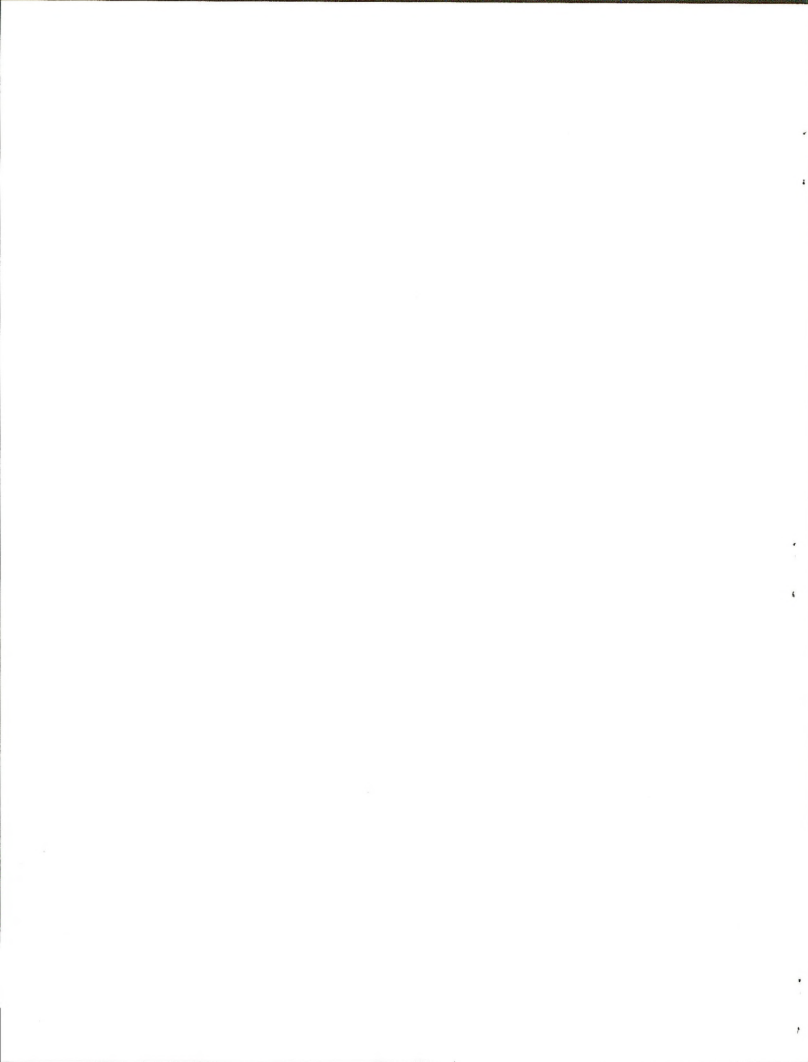
Vol. 2, No. 8

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INTRODUCTORY NOTES

The Montana Board of Crime Control has approved two grants for training prosecutors statewide. One provides for out-of-state training and the other funds the Department of Justice evidence seminar scheduled for December 14th and 15th, 1978 in Billings at the Holiday Inn West. Totally, the Board awarded approximately \$16,000 in funds for prosecutor training.

The tentative schedule of events for the evidence seminar is as follows:

THURSDAY - DECEMBER 14, 1978

8:00 - 9:00 a.m.	Registration
9:00 a.m.	Welcome
9:15 a.m.	Lecture on Evidence
10:00 a.m.	Coffee Break
10:15 a.m.	Evidence (cont.)
11:30 a.m.	Lunch
1:00 p.m.	Evidence Gathering, Packaging and Testing
3:05 p.m.	Coffee Break
3:15 p.m.	Scientific Evidence
5:00 p.m.	Adjourn
6:00 p.m.	Hospitality Room - MCAA - Room 227

FRIDAY - DECEMBER 15, 1978

8:30 a.m.	Evidence in Paper Cases
9:30 a.m.	Coffee Break
9:45 a.m.	Expert Witnesses
10:45 a.m.	Recent Development in Forensic Science
11:45 a.m.	Lunch
12:45 p.m.	Real and Demonstrative Evidence
1:45 p.m.	Coffee Break
2:00 p.m.	Interviewing Victims and Witnesses

Reservation cards have been mailed to each County Attorney's Office. They must be received by the Holiday Inn West by December 1, 1978 in order to assure a reservation. A ten dollar fee will be assessed each attendee. All county attorneys and their deputies are encouraged to attend this valuable continuing legal education.

Applications for out-of-state prosecutor training should be addressed to Marc Racicot, CPS, Attorney General's Office, State Capitol Building, Helena, Montana 59601. Once again, all prosecutors are reminded that individual grant applications to the MBCC are no longer necessary to attend out-of-state training sessions. Only the procedure mentioned above need be followed. The grant awarding out-of-state funds calls for a ten percent "match". Accordingly, when a prosecutor attends out-of-state training, the county for which he works will be obligated to assume ten percent of the total cost. A schedule of out-of-state training events is included in this issue.

Included within this issue also are two articles, one on terrorism and the other on recidivism, courtesy of the California District Attorneys Association, and a list of services directed to rape and sexual assault located in Montana. Also included is an article on the use of the scanning electron microscope.

Eighteen prosecutors met at the War Bonnet Inn in Billings on November 9th and 10th, 1978 to discuss areas of legislative interest to the MCAA. All county attorneys will be furnished with a list of those bills that will be supported by MCAA. At the meeting it was decided that a lobbyist will be hired to act on behalf of the MCAA.

Quotes For Prosecutors

"It is not the office of the Courts to create judicial amendment to the Constitution to protect persons from the risks of errors of judgment in trial tactics." United States v. Garrett, 371 F.2d 296.

"Once it is shown that the accused knew what he was doing when he talked to police and that he did so with full knowledge of his rights, he ought to be just as responsible for his decision to talk as he is for his decision to commit crime." State v. Atherton, 410 P.2d 208.

RECENT CASES AND NOTES

DEFENSE COUNSEL -- A VIABLE ALTERNATIVE

In Burma, just about anybody can become a judge, but not a lawyer. The attorney there is in a precarious position. He can even be convicted for defending the wrong party. A three-judge panel, in fact, recently sentenced a lawyer to six months in jail after the culprit he argued for likewise was sentenced to six months. In Rangoon, one judge refused to listen to the attorney who was there to defend an accused prostitute. The judge knew she was guilty, he said, because he's once solicited customers for her. ----- Reprinted without permission from the Idaho Prosecuting Attorneys Association Newsletter.

SENTENCING JUDGE MAY CONSIDER HIS BELIEF THAT DEFENDANT LIED

Resolving a split among the federal circuits, the US Supreme Court adopts the majority view that, in imposing sentence, district judges may consider their belief that the defendant lied on the stand. The Chief Justice, writing for a 6-3 majority, rejects a defendant's claims that such a practice violates due process and "chills" his right to testify in his own behalf, as guaranteed by 28 USC 3481. (US v. Grayson, 6/26/78).

First, Williams v. New York, 337 US 241 (1949), "fully supports consideration of such conduct in sentencing." Williams recognized rehabilitation as the modern goal of penology, and a sentencing judge's consideration of the "fullest information possible concerning the defendant's life and characteristics" as relevant to this goal. A defendant's readiness to lie under oath, the majority says, "may be deemed probative of his prospects for rehabilitation."

Second, a defendant's right to testify is only the right to testify truthfully under oath. "There is no protected right to commit perjury." Moreover, the majority terms "entirely frivolous" the claim that a defendant's right to testify truthfully will be chilled.

The majority does not, however, endorse automatic enhancement of sentences for every defendant deemed by a judge to have lied. But, a sentencing judge may "evaluate carefully a defendant's testimony on the stand, determine -- with a consciousness of the frailty of human judgment -- whether that testimony contained willful and material falsehoods, and, if so, assess in light of all other knowledge gained about the defendant the meaning of that conduct with respect to his prospects for rehabilitation and restoration to a useful place in society."

Mr. Justice Stewart, joined in dissent by Justices Brennan and Marshall, argues that a sentence like the one approved by the majority is "nothing more or less than a penalty imposed on the defendant's exercise of his constitutional and statutory rights to plead not guilty and to testify in his own behalf." -- Reprinted without permission from the Criminal Law Reporter, 6/28/78.

ARREST - STOP & FRISK

Asking two men being questioned in suspicious circumstances to step out of their car with their hands up, then frisking them for weapons did not change the subsequent on-the-scene questioning to custodial interrogation which requires Miranda. The questioning was general, name and what they were doing, it did not become custodial until burglary tools were discovered. State v. Starr (Ariz.) 581 P.2d 706.

DISCLOSURE

Where an officer who was testifying noticed trackmarks on defendant's arm during a recess and told the prosecutor who told the defense attorney, the continuing disclosure requirement was satisfied. Technically, sanctions were probably unavailable. "Out of fairness" defendant was offered a continuance which he refused. After all how can a defendant be surprised and prejudiced by testimony about his own physical condition? State v. Mosley (Ariz.) 581 P.2d 238.

DISCOVERY

Discovery is available to the defendant only when a suit or case has been filed. A suit or case is a plenary lawsuit wherein ultimate issues such as liability are resolved. A proceeding to determine whether the Attorney General had reasonable cause to investigate defendant for consumer fraud is not such a suit or case. People ex rel Babbitt v. Herndon (Ariz.) 581 P.2d 688.

DRUGS & NARCOTICS

Testimony that a third party referred the informant to defendant, defendant picked up the seller and stated after this, all further sales could be made at his house and that defendant referred to the supplier as "his people", was sufficient evidence to uphold the guilty verdict over defendant's claim of entrapment. State v. Bean (Ariz.) 581 P.2d 257.

Evidence of needle trackmarks whose age indicated that they were made about the time appellant was arrested for possession of heroin for sale, was properly admitted inter alia to show knowledge of the presence of heroin in the car and knowledge that the substance was heroin. State v. Mosley (Ariz.) 581 P.2d 238.

EXPERT WITNESSES

The trial court "clearly" did not abuse its discretion in letting a policeman testify as an expert witness on needle trackmarks. The officer had ten years of experience, with five of them spent undercover where he observed thousands of narcotics users and observed numerous trackmarks. State v. Mosely (Ariz.) 581 P.2d 238.

LESSER INCLUDED OFFENSE

Trespass is not a lesser included offense of burglary. Therefore, attempted trespass is not a lesser included offense of attempted burglary. State v. Starr (Ariz.) 581 P.2d 706.

SEARCH & SEIZURE

An officer was justified in entering defendant's car to roll up the windows and lock it, whether or not an inventory search would have been justified and in spite of the fact defendant expressly stated that he did not consent to a search. Once inside, the officer could seize burglar tools in plain view in the glove box. State v. Starr (Ariz.) 581 P.2d 706.

Officers, who knew that search warrants had been served at a house, had information the people were dealing in drugs and stolen property, saw a car pull up to the house and get unloaded, then loaded with a gun and stereo, saw it make two stops and saw one of the occupants make a motion under a seat when they approached the already stopped car, had reasonable cause to suspect armed criminal activity and to question defendant. Marijuana observed by flashlight in the car during a cursory check for weapons gave the officers probable cause to search the whole car, disclosing heroin. State v. Mosley (Ariz.) 581 P.2d 238.

SUFFICIENT EVIDENCE

Evidence sufficient to sustain conviction for possession of heroin for sale and possession of marijuana is found in State v. Mosley (Ariz.) 581 P.2d 238.

CODEFENDANTS - IMMUNITY

Where defendant merely claimed that codefendant's full and honest testimony would be exculpatory to defendant, there was no denial of due process because the government refused to grant immunity to the codefendant so that he might testify. The defendant has no absolute right to elicit testimony from any witness whether codefendant or not, and the government cannot be compelled to grant immunity to any witness. United States v. Carmen (9th Cir.) 577 F.2d 556.

DOUBLE JEOPARDY

Reversal of the trial court's judgment of acquittal will not subject the defendant to multiple prosecutions where the jury has returned a guilty verdict which can be reinstated. United States v. Dreitzler (9th Cir.) 577 F.2d 539.

MARIJUANA

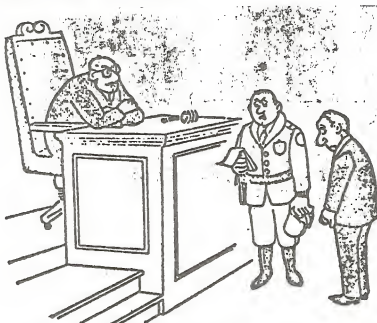
Trial court could infer intent to deliver from defendant's possession of 112 ounces of marijuana. Commonwealth v. Harmes, (Pa. Supr.) 386 A.2d 551.

HEARSAY

Although it constitutes double hearsay, the testimony of a police radio dispatcher that the victim/officer broadcast on his car radio that the defendant sitting next to (the officer) in the car was forcing him at gunpoint to drive to another location and was threatening to kill him, is admissible and falls under several hearsay exceptions. The statements of the officer are admissible under the res gestae exception, present sense impression exception, excited utterance exception or the transmission made in regular course of business exception. The statements of the defendant as relayed by the officer are admissible either as admissions by the defendant, a statement of his mental condition or declaration of intent. State v. Connley (N.C.) 245 S.E.2d 663.

PAROLE REVOCATION

While Morrissey v. Brewer, 92 S.Ct. 2593, holds that in a parole revocation proceeding, Due Process requires that the fact finders provide a written statement of the evidence on which they rely in revoking parole, the statement need not be detailed or highly specific and may even be oral if the purposes of notice and protection from successive revocation proceedings are fulfilled. State v. Sommer (Maine) 388 A.2d 110.



"He called me over to complain that his dashboard and steering wheel had been stolen. Noticing he was in the back seat, I thereupon smelled his breath . . ."

PEACE OFFICERS

Relying on a California state law prohibiting off-duty officers working as private security guards from indicating in any way that they are police officers and another statute prohibiting officers from getting paid for doing an official act, the California Supreme Court holds that a battery on a uniformed peace officer acting as a private security guard is a simple battery, not an aggravated battery. The opinion says that this rule applies only to off-duty officers in similar private, contractual situations. People v. Corey (Cal.) 581 P.2d 644.

PERJURY - INDICTMENT

An indictment for perjury may not stand unless the court specifically sets forth the precise falsehood and the basis of the falsity. The prosecutor's failure to ask specific, unambiguous questions during the grand jury proceeding precluded a subsequent finding of perjury since ambiguous questions elicit ambiguous answers. The problems with answers which are evasive or misleading though literally true are to be remedied by more carefully narrowed questioning and not by a perjury charge. *United States v. Tonelli* (3th Cir.) 577 F.2d 194.

SEARCH & SEIZURE - STANDING

An Oklahoma defendant, who was charged with possession of marijuana with intent to distribute, lacked standing to contest a New Mexico search of an accomplice's car, when he was arrested after he received the same marijuana from the accomplice who had agreed to cooperate. He was not in the car at the time of the search, the car was not his and the case did not include as an essential element possession of the marijuana at the time of the search and seizure. *Beck v. State* (Okla.Cr.) 581 P.2d 903.

SCIENTIFIC EVIDENCE

Results of a neutron activation test used to show whether defendant had recently fired a gun are recognized by the Missouri court as being considered reliable and accurate by the scientific community and thus are admissible notwithstanding an absence of proof that the testing equipment had been tested for accuracy. *State v. Jackson* (Mo.) 566 S.W.2d 227.

SUFFICIENT EVIDENCE

A defendant who was seen in the vicinity which was 12 miles from his hotel, two days before the attempted break-in, was seen running from the scene of the attempted break-in, resisted officer's entry into his hotel room, and attempted to disguise himself when told that he would be in a lineup, was properly convicted of attempted burglary. *People v. Fletcher* (Ill.) 377 N.E.2d 809.

SPEEDY TRIAL

Where a few days before trial the defendant assaulted his defense attorney causing the attorney to request to withdraw, the court ordering a continuance to permit finding other counsel was "certainly a delay for 'good cause'" and was not a denial of defendant's right to a speedy trial. *Foxworth v. State* (Ark.) 566 S.W.2d 151.

WAIVER - COUNSEL

A non-indigent defendant who was urged to retain counsel, given additional time to do so, had his bond reduced and was given access to a phone to do so, waived his right to counsel by his failure to obtain counsel. *State v. Jacobs* (S.C.) 245 S.E.2d 606.

CHAIN OF CUSTODY

A deputy testifying that a shell casing he found at the murder scene was in substantially the same condition as when he found it, identifying his initials that he scratched in the casing, and identifying the written slip he put with the casing was sufficient to establish a prima facie foundation to allow the evidence to be admitted. It is unnecessary to eliminate all possibility of tampering and a foundation for the admission of evidence may be laid either through identification testimony or by establishing chain of custody. (Emphasis in original; defendant's theory was the shell casing was tampered with to frame him.) State v. Macumber (Ariz.) 582 P.2d 162.

COMMENT ON SILENCE

An officer's non-responsive answer that defendant refused to answer questions, which the prosecutor immediately had stricken, was harmless error here. The prosecutor was attempting to, and later succeeded in, getting two spontaneous statements, which gave defendant's version of the affair, into evidence. State v. Davis (Ariz.) 582 P.2d 175.

ARREST - EXIGENT CIRCUMSTANCES

An officer who had probable cause to arrest defendant for obstructing justice in his presence did not need an arrest warrant in order to follow defendant when defendant, who refused to produce a driver's license, turned, walked into his house and slammed the door in the officer's face. Defendant was a fleeing felon, and one of the exigent circumstance warrant exceptions is hot pursuit of a fleeing felon. State v. Davis (Ariz.) 582 P.2d 175.

CONSPIRACY

Defendant may be held responsible on both possession and distribution counts despite the fact the specific acts of possessing and distributing the heroin were performed by co-conspirator. Defendant was chargeable with and responsible for the substantive offenses committed in furtherance of the conspiracy at a time that he was a member of it. United States v. Carter (Cir. 3) 576 F.2d 1061.

COUNSEL

Removal of a defense attorney from the case, over defendant's objection, merely because the trial judge disagreed with the way the defense attorney was handling the case was reversible error. While the defense presented was felt by the trial court to be incompetent, the appellate court disagreed. Harling v. United States (D.C. App.) 387 A.2d 1101.

DEATH PENALTY - AGGRAVATION

Taking the gas station attendant out to the woods, robbing him on the way, then blowing his head off constituted two aggravated factors. The murder occurred in a crime for pecuniary gain, and was especially heinous, atrocious and cruel, involving mental torture of the victim. Bell v. State (Miss.) 360 So.2d 1206.

DOUBLE JEOPARDY

The judge's incorrect legal interpretation of a federal statute was appealable where he directed verdicts of acquittal after the jury found four or five defendants guilty. Although the judge labeled the ruling an acquittal, double jeopardy does not attach if, as occurred here, the reversal of the jury verdict is strictly on legal grounds. United States v. Quarry (10th Cir.) 576 F.2d 830.

ENTRAPMENT

Undercover officers who gave the unemployed defendant \$25.00 to fence a "stolen" typewriter with a police "fence" did not entrap the defendant when 26 days later he returned to the police "fence" with stolen goods. After the initial encouragement to advertise the police "fencing" operation the police did nothing more to encourage defendant, so the appellate court refused to take the "sting" out of defendant's conviction for receiving stolen goods. Johnson v. United States (D.C.App.) 387 A.2d 1108.

EVIDENCE DESTRUCTION - TESTS

"Due process does not require that criminal conduct go unpunished simply because that perpetrator leaves only a small sample of incriminating evidence behind." Thus where the expert testified it was necessary to use the whole bloodstain to get reliable results, defendant was not denied due process by the test which destroyed the bloodstain. State v. Carlson (Minn.) 267 N.W.2d 170.

HABEAS CORPUS

Since a hearing on defendant's search and seizure claim was held at defendant's trial, he could not complain on petition for federal habeas corpus relief that he did not receive another opportunity to be heard on the same point in his state post-conviction proceedings. United States v. Ruigomez (Cir. 5) 576 F.2d 1149.

HEARSAY - CONSPIRACY

Statements of an absent, unindicted co-conspirator are admissible against defendant as long as there is independent evidence of a concert of action in which the defendant participated. United States v. Dawson (5th Circuit) 576 F.2d 656.

JURY PANEL

Underrepresentation of various groups by margins of 7%, 14%, 29% and 30% were not shown to be the result of systematic exclusion and therefore the underrepresentation was not grounds for reversal. State v. Porro (N.J.Supr.) 385 A.2d 1258.

MIRANDA

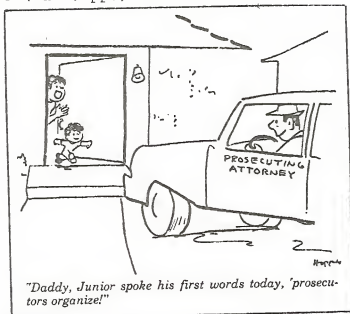
Following an Arizona Supreme Court decision with similar facts, the Hawaii Supreme Court holds that it was unnecessary for officers responding to a burglary call to give a person at the scene Miranda before asking whether the person lived there, had permission to be there, whose car was in the driveway and whether he owned the tools in it. "Limited questioning during a reasonable investigatory detention is permissible when the confrontation has not reached the 'interrogation stage.'" State v. Patterson (Hawaii) 581 P.2d 752.

PEACE OFFICER

An off-duty officer working as a store security guard who identified himself as a police officer had told the defendant he was under arrest for shoplifting was a peace officer engaged in the performance of his duties. Defendant's aggravated assault conviction for inter alia shooting the officer in the hand is upheld. State v. Coleman (Kan.) 580 P.2d 1329.

PRESUMPTIONS - JURY INSTRUCTION

A jury instruction, recited verbatim in the opinion, that a person who enters or remains unlawfully in a building may be inferred to have intended to commit a crime unless he offers a satisfactory explanation was constitutional and did not constitute reversible error. State v. Deiro (Wash.App.) 581 P.2d 1079.



PRIOR CONVICTIONS

Whether or not defendant's prior felony conviction would still be a felony in the jurisdiction in which he was sentenced is irrelevant. The prior conviction will be counted as a prior conviction when sentencing defendant as a habitual offender. Defendant is being punished for a subsequent violation after committing an offense which at that time and place was a felony. This does not deny equal protection. People v. Lake (Colo.) 580 P.2d 788.

STIPULATIONS

A crafty defense attorney gets his client a new trial by stipulating that a doctor testified he didn't sign defendant's prescription and that the doctor rarely prescribed that drug. The problem is the defense attorney did not stipulate that the doctor testified truthfully, thus defendant's right of confrontation was violated. Millican v. State (N.M.) 581 P.2d 1287.

VOLUNTARINESS OF STATEMENT

Officer stating in presence of defendant not to bother questioning defendant because they had "just found the gun" in the course of a search of defendant's house was not a deceitful endeavor to elicit a statement from the accused and a subsequent confession was not violative of defendant's Fifth Amendment rights. Humphrey v. State (Md.) 386 A.2d 1238.

WITNESSES

Evidence that the witness testifying for the defense was afraid of defendant's brother was properly admitted to show bias on the part of the witness. State v. Williamson (Neb.) 267 N.W.2d 337.

Refusal to give an undercover officer's home address to the defense attorney whose only reason for asking was so he could investigate the officer's background for impeachment purposes is upheld in Brown v. State (Nev.) 580 P.2d 947.

U.S. SUP. CT. - FOURTH AMENDMENT PERMITS CHALLENGE TO AFFIANT'S VERACITY

Where a defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in an affidavit in support of an application for a search warrant and if the false statement is necessary to the finding of probable cause, the Fourth Amendment mandates that a hearing challenging the veracity of the affidavit be held at the defendant's request. Franks v. Delaware, 23 Cr. L. 3179 (6-28-78).

NEBRASKA - SMELL OF POT DURING MOTOR VEHICLE REGISTRATION CHECK GAVE PROBABLE CAUSE FOR SEARCH

The Nebraska Supreme Court has concluded that an officer who has stopped a car for a vehicle registration check on the hunch it may have been stolen and then smells marijuana emanating from the car constitutes sufficient probable cause needed to search the vehicle without a warrant or consent. State v. Kretchmar, 201 Neb. 308.

CALIFORNIA - REQUEST FOR PROBATION OFFICER INVOKES FIFTH AMENDMENT PRIVILEGE

Because the government did not meet its burden, a sixteen-year-old suspect who requested to see his probation officer had in effect invoked his Fifth Amendment privilege against self-incrimination and further interrogation involving the youth must cease, a majority of the California Supreme Court held in *In re Michael C.*, 23 Cr. L. 2277, (6-28-78).

PROSECUTION ARGUMENT

It is error for a prosecutor in summation to state "If the defendant had not committed a crime, he would not have been arrested." *People v. Rodriguez*, 403 N.Y. S.2d 275. Use of the term "animal" by the prosecutor in his closing argument by which the jury might have inferred that the reference was to the defendant creates error. *Commonwealth v. Collins*, 373 N.E.2d 969.

SEARCH WARRANTS - PROBABLE CAUSE - NARCOTICS

A police observation of one marijuana plant growing in defendant's back yard was insufficient to establish probable cause for a search warrant for defendant's home. No evidence was presented to the magistrate indicating that marijuana was actually being cultivated in the defendant's back yard. "Without a showing that the marijuana was not growing wild there are no facts from which it can be inferred contraband was in [defendant's] home." The Court concluded: "The right of the People of the United States of America to be secure in the privacy of their homes is upon too solid a foundation to be undermined by what could well be a happenstance growing of one marijuana plant in a yard." *People v. Pellegrin*, 144 Cal. Rptr. 421, Cal.App., 1977)

PROCEDURE - STANDING - VICARIOUS STANDING

Defendants, charged with conspiracy to possess heroin with intent to distribute and with travelling in interstate commerce to promote and facilitate an unlawful activity, did not by standing near a co-defendant in a public airport building while the co-defendant was searched and heroin taken from his person, gain standing to challenge the search and seizure merely because they were travelling together and were treated as a unit by the police when the search occurred. "The instant court adhered to established principles that Fourth Amendment rights, being personal, cannot be asserted vicariously. Indeed, the Supreme Court has rejected the proposition that any defendant, such as fellow-traveller, should have standing to object to an allegedly illegal search of or seizure from another...We adhere to the general rule that, unless possession of the seized property is an element of the offense, an accused may not invoke the exclusionary rule unless he has an interest in the items seized or in the place searched that gives rise to a reasonable expectation on his part of freedom from governmental intrusion upon those premises or with respect to those articles." *United States v. Riquelmy*, 572 F.2d 947, 2nd Cir., 1978.

MIRANDA - INTERROGATION - REFUSAL TO SIGN WAIVER FORM - SHOWING
DEFENDANT COPY OF ARREST WARRANT

Merely because defendant refused to sign a Miranda waiver form while he was being processed for his arrest, did not render inadmissible a statement made by him after a copy of the arrest warrant was exhibited to him by the police. The exhibition of the warrant did not constitute "interrogation" within the purview of Miranda. United States v. Jordan, 570 F.2d 635, 6th Cir., 1978.

CUSTODY - HOSPITAL INTERVIEW - ON-THE-SCENE INVESTIGATION

Where a sheriff arrived at a hospital where defendant had taken his wife with a gun shot wound, and the sheriff was told by a nurse that defendant had shot his wife, the sheriff was not required to give defendant his Miranda warnings before going over to him and asking him "what had happened." The Court ruled that the inquiry was not interrogation, but rather merely an "on-the-scene investigation." After this, the defendant was advised of his Miranda rights, and the Court further held that after reading the defendant his Miranda rights, the sheriff was not required to specifically ask defendant if he wanted an attorney and if he was waiving his constitutional rights and agreeing to talk to the sheriff. "The record shows that the defendant was fully apprised of his constitutional rights and that he in fact waived such rights. There is no requirement that law enforcement officers must encourage defendant to avail himself of the opportunity to consult with an attorney." Gainer v. State, 242 S.E.2d 286, Ga.App., 1978

MIRANDA - NECESSITY OF REPEATED WARNINGS - STATEMENT CONCERNING
IDENTIFICATION

Where the defendant had been administered Miranda warnings, it was not necessary to give the Miranda warnings a second time when the police informed him that he had just been identified by an eye witness. "It was legitimate investigative technique for the police to tell the defendant, truthfully, that he had been identified. It was not necessary beforehand for the police to remind him of what he had already been told - the full recital of Miranda warnings." State v. Burden, 382 A.2d 1146, N.J.App., 1977

BURGLARY - DWELLING HOUSE - UNOCCUPIED CABIN

An unoccupied cabin in a remote area which was entered by two defendants in the month of January after they had fallen through the ice on a nearby creek, and which for the preceding three or four years had only been occupied in the evening during the summer months, and which had not been used by anyone for several months prior to the entry by the defendants, and which was not ready for occupancy at the time of the entry by the defendants, and in which there were no fuses in the fuse box, the bathroom fixtures had been disconnected for the winter, and there were mice tracks throughout the cabin, was not a "dwelling house" within the meaning of a statute (SDCL 22-32-11, 22-32-14) which defined the offense of burglary in the fourth degree. The Court stated that if the cabin had usually been occupied by someone at night, it would have fit the statutory definition of "dwelling house". State v. Celli, 263 N.W.2d 145, S.D., 1978.

DOUBLE JEOPARDY - MISTRIAL - MANIFEST NECESSITY

Where a foreman explained to the trial judge that the jurors simply felt that certain incidents "should be brought to light," referring apparently to a contact between the defendant and a member of the jury, it was error for the court to declare a mistrial without requesting that the circumstances surrounding the juror's contact with the defendant be explained and without finding how the occurrence had been described to the other jurors. There was only a brief and confusing exchange between the trial court and the jury and counsel for both sides were not given an opportunity to address the possibility of bias or the need for a mistrial. Under these circumstances it was a abuse of discretion to declare a mistrial and double jeopardy prevented a retrial. United States v. Starling, 571 F.2d 934, 5th Cir., 1978.

DISCOVERY - REQUIRING VICTIM OF CRIME TO UNDERGO SURGERY TO REMOVE A BULLET

It has been held that the victim of a crime cannot be constitutionally required to undergo surgery against his will to remove a bullet, upon the discovery motion of the defendant who wishes to run a ballistic test on the bullet. This would be true even though removal of the bullet would not be dangerous to the victim. The Court stated: "The Fourth Amendment Right of the victim to be secure against an unreasonable search must prevail over the right of the accused to obtain evidence for his defense." State v. Haynie, 242 S.E.2d 713, Ga. 1978.

PRISONERS' RIGHTS - FIRST AMENDMENT ISSUES - REGULATIONS PROHIBITING VULGAR LANGUAGE

Where a prisoner told a correctional system official that he was tired of "chicken shit rules", he could be disciplined under a prison rule prohibiting "vulgar or insolent language" and this did not contravene any First Amendment rights of free speech that the prisoner had. The Court takes note of the fact that requiring inmates to comport themselves in a decent, mature and civil manner is relevant to achieving fundamental penal objectives. Durkin v. Taylor, 444 F.Supp. 879, Va., 1977.

JUVENILES--RIGHTS TO COUNSEL--WAIVER

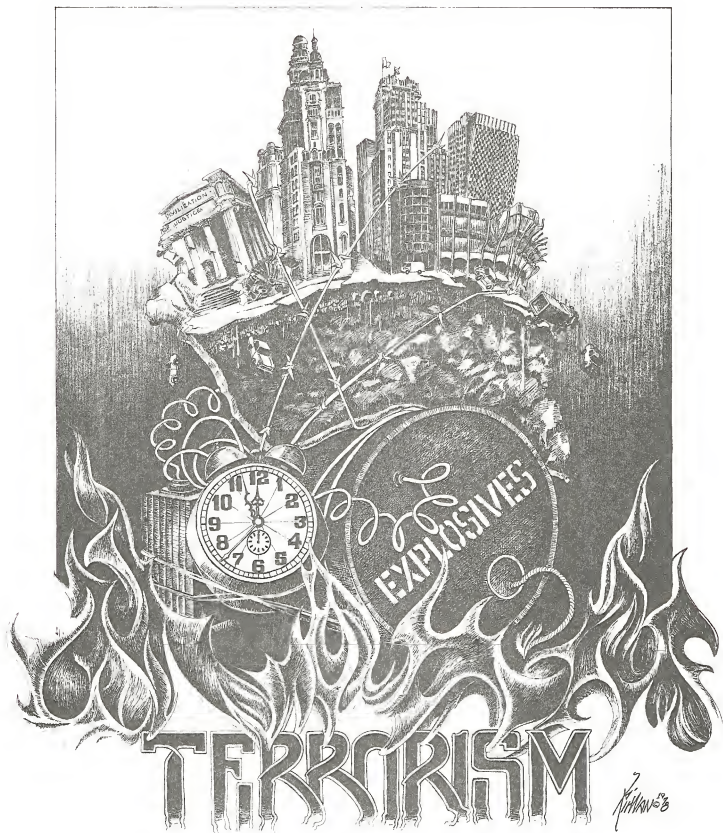
The Fifth Circuit Court of Appeals has held that a juvenile can intelligently and competently waive his right to counsel in a juvenile delinquency proceeding without the prior advice and assistance of counsel. "...This court consistently has held that a court must examine the "totality of circumstances" to determine whether a juvenile has validly waived his rights against self-incrimination and to counsel. Age is only one factor that court must consider." McLemore v. Cubley, 569 F.2d 940, 5th Cir., 1978.

CONSENSUAL OR PARTICIPANT MONITORING

Citing State v. Brackman, 23 CrL 2487 (Mont. 1978), #13971 the Alaska Supreme Court holds that the state's constitutional privacy guarantee forbids law enforcement officers to conduct warrantless electronic monitoring of private conversations even though one of the parties may have consented. If police seek a warrant the issuing magistrate must find probable cause to believe that the monitoring will yield evidence of a crime. State v. Glass, 24 CrL 2025.

SENTENCE - CRUEL AND UNUSUAL PUNISHMENT - 76 YEAR-OLD DEFENDANT

It was not cruel and unusual punishment to sentence a 76 year old defendant to a five year mandatory sentence, even though it would seem likely that such a defendant would not serve out his term because of the great possibility of intervening death. The Court, however, did not discuss the issue, other than to note that the sentence was within the statutory framework. The crime was assault with a firearm. State v. Bruce, 576 P.2d 1324 Wash.App. 1978.



TERRORISM

By

PAT ATTHOWE *

Terrorism is by definition a coercive act designed to intimidate and frighten. Political terrorism is a coercive strategy which employs fear as a tactical means to effect a political end - government by extortion.

Contrary to prevailing misinformation, terrorism is not a virus for which there are no antibodies nor is the menace an impending epidemic which will have to be endured until it runs its course.

Terrorists are criminals engaged in a declared guerrilla war against the body politic. Their movement is a criminal conspiracy. Their demise requires a "redefinition" of terrorism as organized crime. Terrorists are nothing more than a violent mafia with political goals.

The expectation that the U.S. government can eradicate terrorism is predicated exclusively on the implied intelligence capability of the law enforcement community - but the vitality of that erstwhile superior capability no longer exists. It has been gutted by the U.S. Congress in an avalanche of expedient legislation alleged to soothe citizen concern over real and imagined intelligence abuses. The law enforcement community has been stripped of efficiency by governmental edict and can no longer guarantee protection of the American public. The baby has been thrown out with the bathwater.

Common sense dictates that it is impossible to defend against an unknown assailant. Who will bell the cat? How will potential suspects be identified if every legitimate attempt to do so is sensationalized as a violation of the suspect's privacy? From what source will suspects be developed if every effort

to surveil potentially violent individuals within political groups is greeted with cries of intelligence abuse? Who will be courageous enough to penetrate any terrorist support vehicle if only to be condemned thereafter on charges of spying? Is it any wonder that informants become increasingly timorous as they watch the federal government give away the store under the Freedom of Information Act?

The mania over privacy has become a fraud on the American public. Whose civil liberties are being protected - the bombers or the victims? Does a terrorist have a legitimate constitutional right to privacy? Is it possible that the civil liberties of a bomber could be offended by a wiretap? Terrorists regularly exchange their own intelligence information - should not law enforcement have the same options without being devoured by the privacy clique?

For practical purposes, the federal government has backed itself into the unfortunate position of keeping Americans safe and secure from the FBI while at the same time guaranteeing their position as potential victims of the terrorists.

The dilemma seems to require a more provocative debate on the tools necessary to wage war against a guerrilla mentality. Professional analysts admit that the conflict is real, allude to a day of reckoning, and speak softly of viable foreign influence in the creation of a domestic terrorist strategy. Professional investigators are adamant in their joint opinion that there are tools which are non-negotiable in the war against terrorism - or any other criminal conspiracy: intelligence, penetration, surveillance and wiretapping.

There is only one effective method of dealing with terrorism, Prevent it.

There is only one way to stop terrorist acts of violence before they occur. Find the terrorists.

There is only one way to find the terrorists. Develop an early warning system compatible with the intensity of the threat and anticipate the logistics of

the terrorist game plan. We must identify the players and isolate the sources of support.

In the U.S., cash flow to the terrorist cadre is unique. The funding comes - for the most part - not from foreign sources, but is derived from the casual philanthropy of U.S. corporations, churches, and foundations -- from the casual siphoning of the U.S. government trough -- and from tax-exempt advantages bestowed by the IRS. Also of crucial significance is the fact that terrorists in the United States have tested and are now capitalizing upon what they perceive to be the Achilles' heel of the United States government - the inability to come to terms with a criminal who alleges a political purpose. The resolution of terrorism will require serious national debate on a myriad of philosophical issues:

- ... the life of the victim versus the privacy of the terrorist
- ... the right of the body politic to defend itself against internal assault
- ... tax-exemption as a terrorist support vehicle

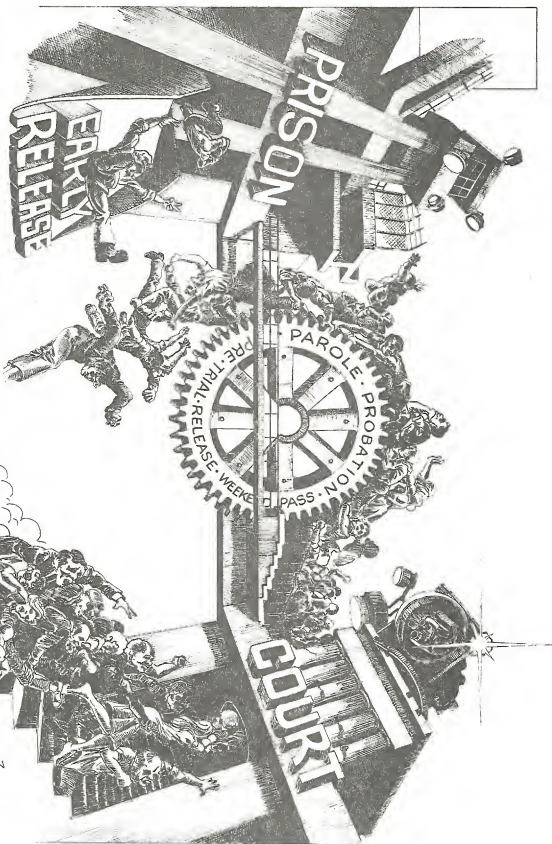
However, the argument is over for the dead. They have been buried -the issue of their civil liberties abandoned on the heap of moot questions.

The debate must proceed with haste. The prime consideration now must be future victims.

* Pat Atthowe is President of Research West, Inc., Emeryville, California.

RECIDIVISM

William
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RECIDIVISM AND CAREER CRIMINAL PROGRAMS

BY

RONALD SABO*

Available studies indicate that a substantial, indeed an inordinate, amount of serious crime in America is committed by a relatively small number of "career criminals".

To reduce the occurrence of serious crimes, while at the same time make more effective use of the limited resources of the criminal justice system, repeat offenders should be identified quickly, prosecuted without unnecessary delays and "incapacitated" for substantial periods of incarceration.

More than 23,000 defendants were convicted in United States District Courts during 1970. Almost 13,000, more than 60%, had prior criminal records.

A full one-third of the prisoners in federal penal institutions had been committed to penal institutions three or more times previously.

One study of felony cases handled by the United States Attorney's Office of the District of Columbia over a period of three years indicates that 7% of the defendants accounted for 25% of the criminal cases handled in the office during that time span.

To deal with these especially active, repeat offenders, the federal Law Enforcement Assistance Administration (LEAA) has developed a priority project, the Career Criminal Program, which is a highly specialized effort to identify, prosecute and lock up career criminals for extended periods.

Pilot LEAA "Career Criminal Projects" have been in operation in 24 different parts of the country for several years.

The San Diego County District Attorney's office was one of the original federally funded Career Criminal Programs. District Attorney Edwin L. Miller, Jr. reports that his office's felony conviction rate for the most serious

felony charged increased from 83% to 97% in the first year of the program. The rate of its state prison commitments increased from 81% to 94.4%.

Similarly, Sacramento County District Attorney John Price has reported that after implementing his office's locally funded Career Criminal Program in 1977, its felony conviction rate increased from 80% to approximately 91% and state prison commitments increased from 20% to approximately 80%.

Information derived by the National Legal Data Center from these various Career Criminal Projects indicate that the 6,519 defendants "disposed-of" before September 1, 1977, by reporting projects, had an average of 11 non-juvenile arrests, an average of 3 prior non-juvenile misdemeanor convictions and an average of 3 prior non-juvenile felony convictions.

These startling facts are confirmed by a recent Rand Corporation study (August, 1977) entitled, "Criminal Careers of Habitual Felons," which concludes: "According to their own statements, this sample of offenders had committed many serious crimes . . . of the nine offense types considered. The average number was 20 per offender per year of street time."

The Rand study adds that, "The level of criminal activity was not constant but declined with age . . . Previous studies of criminal behavior, based on official records, have found that participation in crime declines with age. A unique contribution of this study is the finding that the level of criminal activity diminishes even among those who remain active in crime. "

An even more striking conclusion is found in the Rand study, "Most (offenders) believed that their resumption of crime (after incarceration) could not have been deterred. For those who believed it could have been deterred, certainty of apprehension would have been the most influential factor."

This conclusion gives credence to a theory espoused more than 200 years ago by Cesare Beccaria in an essay, Of Crimes and Punishments. Swift and certain apprehension and punishment of the guilty, the theory says, will have significant deterrent effect on crime rates and perpetrator attitudes.

While the Rand study contains a number of qualifiers, its conclusions are consistent and confirm the opinions of many leaders in the criminal justice community, particularly those acquainted with Career Criminal Programs.

Against this empirical background and experience, the Rand study reaches what seems to be an inescapable conclusion. And that is, "The continuing criminal activity of this sample in the face of frequent arrests, convictions, and incarcerations is an indication of the inability of previous rehabilitation, deterrence, and prevention efforts to curtail their criminal behavior."

The Rand study goes on, "The primary alternative for counteracting such offenders is a greater reliance on incapacitation. Incapacitation policies are intended to assure the conviction and prolonged incarceration of serious habitual offenders, once arrested. The rationale is obvious: offenders cannot commit crimes against the community while in prison, and they are not likely to be able to make up for lost time after release if the probability of reincarceration is high."

There are significant problems in apprehending and convicting "career criminals: much less assuring that the "probability of reincarceration is high." Doing either in a timely manner is also difficult.

Urban prosecutors' offices are always besieged by burgeoning caseloads and often hamstrung by reluctant and uncooperative witnesses. They are unable to routinely assign experienced prosecutors to the most serious cases. As a result, prosecutors have been, in some instances, forced to dismiss cases or to plea bargain them down to lesser offenses.

"Career Criminals" know how to effectively manipulate this situation and the impact has been predictably disappointing. As Professor Ernst van den Haag of New York University noted in his recent book, Punishing Criminals, the proportion of offenses which result in prison sentences rests at about one percent of the total number of actual crimes committed.

The percentage of those incarcerated does not rise markedly even for career criminals.

For example, a study of all adult males convicted of felonies in the State of Wisconsin from 1954-1959, disclosed that 63% of those who had previously been convicted of another felony were still granted probation. Moreover, a full 41% of those who had two or more prior felony convictions were still granted probation for the subsequent offense.

In Los Angeles County, of those convicted of burglary with a serious prior record, only 6% were sent to prison. Of those convicted of burglary with a prior prison term, only 12% were sent back.

Thus, the LEAA Career Criminal Program was conceived as a means of focusing on the habitual criminal offender so as to stop the apparently existing system of "revolving door criminal justice." It has demonstrated real promise of unhinging that revolving door.

This year California became the first state in the nation to build on the federal Career Criminal Program. This California did by appropriating general fund revenues for a statewide system of Career Criminal Programs in major metropolitan areas.

In 1976, the Ventura County District Attorney's Office became the first jurisdiction, in the nation to establish Career Criminal Program with local resources. In 1977, the Sacramento County District Attorney's office followed suit.

The California legislation, which provides an annual funding level of \$3 million, was initially spearheaded by Senator George Deukmejian and signed into law by Governor Edmund G. Brown Jr., late last year.

In February, 1978, Governor Brown unveiled a comprehensive Urban Strategy for California. The strategy documented a correlation between serious crime and economic and social deterioration. The wide-ranging strategy integrated the Career Criminal Program into the Governor's long-term policy goals with the expressed intent being to improve the economic and social climate of California cities.

*Ronald Sabo is Projects Director of the National Legal Data Center, Thousand Oaks, California.

SERVICES DIRECTED TO RAPE AND SEXUAL

ASSAULT IN MONTANA

BILLINGS

An- Billings Rape Task Force
Ad- 804 N. 29th St., Room 300
Ad- Billings, Montana 59101
Ad- (406) 248-8892 (Women's Resource Center)
Sp- hotline; crisis intervention counseling; information and
referral; inservice training; community education; speaker's
bureau

BUTTE

An- Women's Resource Center
Ad- YWCA
Ad- 405 W. Park St.
Ad- Butte, Montana 59701
Ad- (406) 792-1266 (office)
Ad- (406) 792-2616 (home)
Hr- 8:00 a.m. - 10:00 p.m.
Sp- hotline; crisis intervention counseling; victim advocacy; for
further information contact Grace D. Sicotte

GREAT FALLS

An- Rape Action Line
Ad- c/o YWCA
Ad- 220 2nd North
Ad- Great Falls, Montana 59401
Ad- (406) 452-7273 (hotline)
Hr- 24 hour hotline
Sp- crisis intervention counseling for victim and significant
others; victim advocacy, information and referral; training
of professionals; community education; speaker's bureau

HELENA

An- Rape Awareness Program
Ad- Women's Center
Ad- 107 West Lawrence
Ad- Helena, Montana 59601
Ad- (406) 443-5353 (office)
Hr- 24 hour hotline
Sp- counseling, peer support groups, victim advocacy; speaker's
bureau

KALISPELL

An- Kalispell Rape Crisis Line
Ad- c/o Family Service
Ad- 723 Fifth Ave. East
Ad- Kalispell, Montana 59901
Ad- (406) 755-5067
Hr- 24 hour answering service
Sp- crisis intervention; victim advocacy; referrals; public
education.
Fs- donations

MISSOULA

An- Rape Relief Program
Ad- Woman's Place
Ad- 1130 W. Broadway
Ad- Missoula, Montana 59801
Ad- (406) 543-7606
Hr- 24 hour hotline
Sp- crisis intervention counseling for victim and significant
others; victim advocacy; third person report; training of
professionals; community education

An- Women's Resource Center, University Center
Ad- University of Montana
Ad- Missoula, Montana 59801
Ad- (406) 243-4193
Sp- refers rape victims to Women's Place; assertiveness training.

USE OF THE SCANNING ELECTRON MICROSCOPE
FOR DETECTION OF GUNSHOT RESIDUE

by

Charles R. B. Kirk
Deputy Attorney General

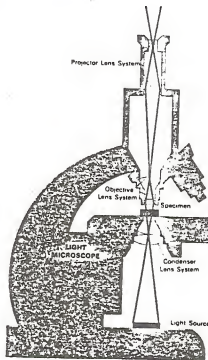
In many criminal cases involving the use of firearms, a critical question is often the classic "Who done it?" or perhaps "Who done what?" For many years law enforcement has utilized testing methods intended to determine whether the defendant has recently fired a firearm. In cases of what appear to be suicides or self-defense shootings, the further question arises as to whether the victim really fired the gun. In recent years, the most widely-used tests have employed neutron activation analysis (NAA) or atomic absorption spectroscopy (AAS) in an effort to detect gunshot residue (GSR) particles among the debris wiped from the hands of the suspect or the victim. But as the result of an exhaustive four-year study, law enforcement now has at its disposal the best tool of all to date: the scanning electron microscope (SEM).

Both neutron activation analysis and atomic absorption spectroscopy suffer from inherent problems which limit their utility. NAA and AAS belong in the category of bulk elemental analysis tests in which the instrument measures the total quantities of elements found in a sample taken from the hand in question. Bulk elemental analysis cannot distinguish between different sources for the elements found, nor can it determine whether the elements are distributed over the surface sampled in

discrete particles or as a coating instead. This characteristic of NAA and AAS could provide misleading results since the elements found in gunshot residue—particularly lead and barium—are both common environmental contaminants, while another GSR elemental component—antimony—can be deposited on the hands of a person who works as an electronics assembler, machinist, painter, or auto mechanic. To guard against the possible presence of environmental contaminants, threshold levels for these three elements were established on the assumption that higher levels could be attributed only to GSR. Only if the elements detected exceeded those levels were the tests considered valid. Threshold levels were particularly unsatisfactory in the case of gunshot residue, however, since experiments using persons who had just fired pistols demonstrated that the critical GSR elements deposited on the shooter's hand were often well below these thresholds even under ideal conditions. Even worse, the quantity of GSR particles deposited rapidly declined with the passage of time as the particles were rubbed from the skin surface. And there were additional problems. NAA is a process which cannot detect lead at all. NAA also suffers from an excessive turn-around time since the sample must be sent to a nuclear reactor facility for analysis. Lead can be detected with AAS, but only with additional, expensive equipment. And neither NAA nor AAS could detect other elements present in the sample (which would indicate an environmental contaminant rather than GSR) without additional, complex steps. Clearly both NAA and AAS were of limited value to law enforcement.

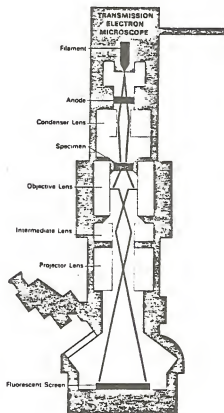
Confronted with this problem, in 1974 LEAA contracted with the Aerospace Corporation, a research institute in El Segundo, California, for the sole purpose of developing a better testing procedure. After canvassing the field of available scientific techniques, the Aerospace Corporation finally focused upon the scanning electron microscope. The SEM is not a new scientific instrument, the first having been constructed in 1938. But the SEM remained largely a theoretical tool because its resolution (ability to distinguish fine details) was considerably poorer than the common transmission electron microscope. So as late as 1955, only 3 SEMs were in existence. But with the rapid space-age technological developments of the '60's, the SEM became a practical scientific tool, and over 500 were in use by 1970.

To understand the value of the scanning electron microscope, it is helpful to make some comparisons with the other types of microscopes commonly used, namely the optical microscope and the transmission electron microscope (TEM). The light microscope magnifies images by sending a beam of light through the object and magnifying the beam containing the image. The optical microscope can magnify images 2500 times, but beyond that, magnification is useless. Magnification is not what



determines a microscope's utility. Instead, microscopes are judged by their resolving power—the ability to distinguish fine details. The best optical microscopes can reveal details as small as 2000 angstroms ($1/125,000$ th of an inch), which is roughly the wavelength of visible light. No microscope can reveal details smaller than the wavelength of the detecting beam. The transmission electron microscope (TEM) has a much greater resolving power since it uses an electron beam which is passed through the object. Of course the eye cannot see electrons, so the image is projected onto a fluorescent screen like a TV tube. The TEM can reveal objects as small as 2 or 3 angstroms. But like the optical microscope, the electron beam shines through the object something like an X-ray. Thus it can provide a good deal of useful information, but like the X-ray, the image seen bears little resemblance to the actual object.

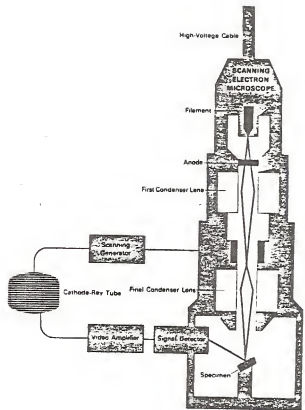
The scanning electron microscope works in a much different way than either of the transmission devices. Instead of shining an electron beam through the object, the electrons are focused into an extremely fine beam (200 angstroms across, or less than a millionth of an inch) which is then swept across the surface of the object much like a single spot of light is



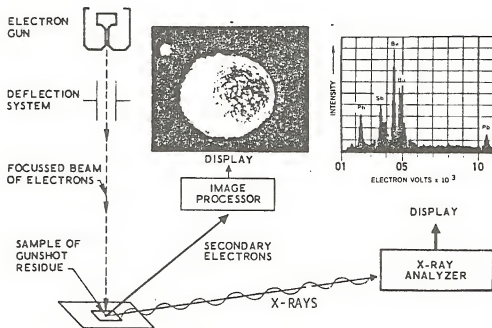
swept across the face of a TV screen to form a picture. As the beam sweeps across the surface in a series of step-like passes, the electrons strike the specimen over its entire surface. At each point, the moving electrons knock loose electrons which are part of the atoms making up the substance. The number of "secondary" electrons dislodged at any particular

point is determined by the composition of the specimen and the angle of incidence. The stream of secondary electrons, which constantly varies according to the nature of the subject surface, is picked up by a detector, amplified, and projected onto a TV screen line by line. Due to the extraordinary depth-of-field (ability to have objects in different planes appear in focus simultaneously) of the SEM, the picture tube builds up a perfect visual replica of the surface of the object being scanned.

A common analytical device used in conjunction with the SEM is an X-ray spectrometer for either dispersion or energy analysis spectrometry. Recalling that a specimen is composed of atoms, we might visualize each atom as something like our solar system where the electrons, like the planets around our sun,



revolve around the center of the atom. When the SEM electron beam strikes the surface of the object, a certain amount of energy can be transferred from a beam electron to an electron within an atom of the object. Such a transfer is known as "exciting" the electron. When an inner shell electron is excited enough to go into a higher level (orbit) or to leave the atom entirely, the excited electron is replaced by one of the outer-shell electrons, conserving energy by emitting an X-ray photon, which in turn is utilized to develop an X-ray spectrum. This X-ray spectrum is unique to each element. Therefore analysis of the X-ray emissions for any particle discloses the elements composing it, permitting a complete chemical analysis of that particle. Thus use of SEM with X-ray spectrometry permits determination of both what the particle looks like (morphology) and what it is made of.

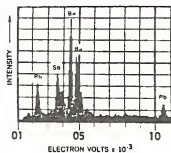


After completing its four-year study, the Aerospace Corporation concluded that SEM for GSR analysis was the method "which gives the most positive identification and has had the highest success rate in actual cases."^{1/} It was discovered that the elements characteristic of GSR particles, such as lead, barium, and antimony, as well as other bullet and cartridge components, are contained in discrete particles, the majority of which have a characteristic spheroid shape, unlike environmental contaminants. This morphology (appearance) of the particle together with the simultaneous identification of its chemical components makes it impossible to confuse a GSR particle with a particle of an environmental contaminant. "[C]ontrol

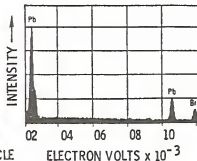
PARTICLE ANALYSIS
LEADS TO POSITIVE
IDENTIFICATION
BECAUSE IT
DISTINGUISHES
BETWEEN SOURCES
BY MORPHOLOGY AS
WELL AS COMPOSITION



GUNSHOT RESIDUE
PARTICLE
3.5μm



AUTOMOBILE EXHAUST PARTICLE
4μm



1. Aerospace Corporation, Final Report on Particle Analysis for Gunshot Residue Detection (ATR-77(7915)-3 (September 1977), p. 5. This report is available from the Aerospace Corporation, El Segundo, California 90245.

samples taken from the hands of persons who had not fired a gun . . . never resulted in a false positive indication."^{2/} The sum of this information, then, leads to positive identification of GSR particles wholly independent of the quantity of particles present, thus avoiding the problem posed by element thresholds, and permitting identification of GSR particles several hours after the weapon was fired, despite the rapid decline in quantity of particles remaining on the hands. GSR particles from a particular brand of ammunition can sometimes be identified as well where the particle contains not only the elements common to most GSR residues but also elements unique to a cartridge component (such as an alloy coating) of that particular brand.

The use of the SEM for GSR analysis has been recently approved in People v. Palmer (1978) 80 Cal. App. 3d 239, 250-54, 145 Cal. Rptr. 466, 471-73, which is the first reported decision in the nation on this technique. Palmer judicially sanctions this procedure for use by law enforcement agencies.

The sample to be analyzed is obtained by dabbing the hand with a sticky tape similar to Scotch tape, and then transferring the sample to a small aluminum disk which is placed in the device. Use of the SEM is not particularly difficult, and a reasonably-experienced criminalist can master the procedure in about 2 hours. Actually, a criminalist is not needed to operate the SEM. Since photographs of the projected image can be taken, along with photographs of the X-ray spectrum displayed, the actual

2. Aerospace Final Report, supra, at p. 7, 55.

determination can be made by a criminalist who did not run the instrument, and this determination can be made at a later time. Both the image photographs and the spectrum display can also be preserved for forensic purposes, or for examination by defense experts.

Use of the SEM is not restricted to GSR analysis. The first reported forensic use of it has involved bite-mark identification, though with varying results. (Compare People v. Marx (1975) 54 Cal. App. 3d 101, fn. 16 at 111, 126 Cal. Rptr. 350, fn. 16 at 356, with People v. Sloane (1978) 76 Cal. Rptr. 611, fn. 6 at 621, 143 Cal. Rptr. 61, fn. 6 at 67.) Actually these two cases do not cast doubt upon the use of the SEM in other contexts, but instead suggest the difficulty of always being able to match something like a bite-mark in something as pliable and resilient as human skin.

Criminalists interested in possible uses of the SEM generally would be well advised to take a look at The Scanning Electron Microscope by C. P. Gilmore, published by the New York Graphic Society in 1972. This is a large-format book of SEM photographs showing everything from skin and hair samples to pollen and dust particles. A brief tour through this book, which should be available in most libraries, will not only be visually rewarding, but might suggest how the SEM might be applied to a particular problem in forensic criminalistics.

NATIONAL COLLEGE OF DISTRICT ATTORNEYS

MASTER CALENDAR OF PROGRAMS FOR PROSECUTORS

SEPTEMBER 1978

- | | | |
|------|---|------------------------|
| | Kansas County & District Attorneys Association
Regional Training Seminar | Hoxie, Kansas |
| - 15 | First Annual Southeastern Prosecutors Office
Management Seminar | Huntsville, Alabama |
| | Kansas County & District Attorneys Association
Regional Training Seminar | Iola, Kansas |
| - 21 | Organized Crime - Part I (NCDA) | Pittsburgh, Penna. |
| - 22 | Oregon District Attorneys Association
Summer Institute for Prosecutors | Marylhurst, Oregon |
| - 22 | Arkansas Prosecutor Coordinator--Short Course for
Newly Elected Prosecuting Attorneys & Their Deputies | East Camden, Arkansas |
| - 22 | Iowa County Attorneys Association--Conspiracy Seminar | Des Moines, Iowa |
| - 23 | Louisiana District Attorneys Association
Assistant District Attorneys Conference | Baton Rouge, Louisiana |
| | Kansas County & District Attorneys Association
Regional Training Seminar | Topeka, Kansas |
| - 26 | Colorado District Attorneys Council Fall Conference | Denver, Colorado |
| - 28 | Texas District & County Attorneys Association--
Basic Prosecution School | Austin, Texas |
| - 29 | Michigan Prosecuting Attorneys Coordinating Council--
Appellate Specialists Conference | Dowling, Michigan |
| - 30 | Georgia Prosecuting Attorneys Council--Third Annual
SE Regional Prosecutor's Institute | Atlanta, Georgia |
| | Kansas County & District Attorneys Association
Regional Training Seminar | Hutchinson, Kansas |
| | New York State--Prosecution of Designated Felonies
in the Family Court | New York, New York |

OCTOBER 1978

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|------------|--|-------------------------|
| - 5 | Trial Techniques for Prosecutors (NCDA) | Denver, Colorado |
| - 6 | Washington Association of Officials--Fall Meeting | Yakima, Washington |
| - 6 | Maryland States Attorneys Coordinator--Narcotics and Gambling Training Seminar | Baltimore, Maryland |
| | Kansas County & District Attorneys Association Regional Training Seminar | Salina, Kansas |
| - 12 | The Prosecutor and the Juvenile Court-Update '78 (NCDA and NCJFCJ) | Reno, Nevada |
| 13 | Kansas County & District Attorneys Association Regional Training Seminar | Garden City, Kansas |
| 18 - 19 | Western Conference on Criminal and Civil Problems--Crimes Involving Women and Children | Wichita, Kansas |
| 22 - 27 | Prosecutor's Investigators School (NCDA) | Huntsville, Texas |
| 23 - 27 | California District Attorneys Association Third Annual National Homicide Symposium | Los Angeles, California |
| 29 - Nov 1 | Trial Law & Evidence (NCDA) | Palm Beach, Florida |
| | Idaho Prosecutors Association--Fall Training Seminar | To Be Announced |
| | New York State--Recent Developments in the Criminal Law--1978 | New York, New York |

NOVEMBER 1978

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|---------|---|------------------------|
| 1 - 3 | Georgia Prosecuting Attorneys Council--18th Annual District Attorneys Seminar | Athens, Georgia |
| 8 | Nebraska County Attorneys Association--Annual Meeting | Omaha, Nebraska |
| 9 - 11 | Florida Prosecuting Attorneys Association Fall Conference | St. Augustine, Florida |
| 9 - 11 | Idaho Prosecuting Attorneys Association Training Seminar | Moscow, Idaho |
| 12 - 14 | Kansas County & District Attorneys Association State-wide Training Institute--KOC | Wichita, Kansas |
| 12 - 15 | Management in the Prosecutor's Office (NCDA) | Atlanta, Georgia |
| 12 - 16 | Iowa County Attorneys Association Fall Training Conference | Davenport, Iowa |
| 15 - 17 | Texas District & County Attorneys Association Winter Meeting | El Paso, Texas |
| 16 - 17 | Oklahoma District Attorneys Secretaries Seminar | Tulsa, Oklahoma |

29 - Dec 1	Oklahoma Bar Association--Oklahoma District Attorneys Association--Winter Conference	Tulsa, Oklahoma
30 - Dec 1	New Mexico District Attorneys Association Crimes Against Persons (NCDA)	Albuquerque, New Me
30 - Dec 2	Ohio Prosecuting Attorneys Association Annual Meeting	Columbus, Ohio
	New York State--Trial Advocacy Institute	To Be Announced

DECEMBER 1978

1 - 2	Washington State Association of Prosecuting Attorneys--Winter Meeting	Seattle, Washington
1 - 6	National District Attorneys Association Board of Directors Meeting	Palm Springs, Calif
3 - 6	Prosecuting Crimes Against Persons (NCDA)	San Diego, California
3 - 7	Michigan Prosecuting Attorneys Council Basic Training for Prosecutors	Bellaire, Michigan
6 - 8	Oregon District Attorneys Association Winter Conference	Salishan, Oregon
7 - 9	Arkansas Prosecutor Coordinator--Insanity Defense Seminar for Prosecuting Attorneys and their Deputies	North Little Rock, AR
10 - 13	Indiana Prosecuting Attorneys Council--Newly Elected Prosecutors School	Indianapolis, Indiana
10 - 15	Iowa County Attorneys Association Basic School for New County Attorneys	Des Moines, Iowa
15 - 16	Washington State Association of Prosecuting Attorneys Newly Elected Prosecutor Course	To be Announced
	Texas District & County Attorneys Association New Prosecutors School	Austin, Texas

JANUARY 1979

7 - 12	Prosecutor's Office Administrator Course--Part II (NCDA)	Houston, Texas
16 - 19	Maryland States Attorneys Association Mid-Winter Convention	Deep Creek Lake, Garret County, Maryland
18 - 20	Nebraska County Attorneys Association New Prosecutor's Meeting (Trial Tactics)	Kearney, Nebraska
21 - 23	Louisiana District Attorneys Association IV-D Conference	Baton Rouge, Louisiana
24 - 26	Kansas County & District Attorneys Association Prosecutor Training and Assistance Institute and Attorney Generals Call	Topeka, Kansas

FEBRUARY 1979

2 - 8	National District Attorneys Association/National Council of Juvenile & Family Court Judges--6th National Juvenile Justice Conference	San Diego, California
4 - 9	Organized Crime - Part I (NCDA)	Los Angeles, California
5 - 8	Oklahoma District Attorneys Training Coordination Council--Seminar for New Prosecutors	Norman, Oklahoma
8 - 10	Pennsylvania District Attorneys Association Mid-Winter Meeting	Hershey, Pennsylvania
8 - 10	Idaho Prosecuting Attorneys Association Training Seminar	Boise, Idaho
25 - Mar 2	National District Attorneys Association Mid-Winter Conference	Biloxi, Mississippi
	New York State--Criminal Law Problems I	New York, New York
	New York State--Criminal Law Problems I	Albany, New York

MARCH 1979

4 - 7	Prosecuting Drug Cases (NCDA)	Tampa, Florida
15 - 17	Louisiana District Attorneys Association 6th Annual Conference	New Orleans, Louisiana
18 - 20	Prosecuting Crimes Against Property (NCDA)	New Orleans, Louisiana
25 - 29	National District Attorneys Association/National Council of Juvenile & Family Court Judges 6th National Juvenile Justice Conference	Miami Beach, Florida
29 - 31	Nebraska County Attorneys Association--Spring Meeting--Search and Seizure	Columbus, Nebraska
	Washington State Association of Prosecuting Attorneys--Spring Meeting	To Be Announced
	Kansas County & District Attorneys Association District Attorneys Seminar	To Be Announced
	Kansas County & District Attorneys Association New Assistants Course	To Be Announced
	Texas District & County Attorneys Association 2nd Annual Investigators Training School	To Be Announced

APRIL 1979

1 - 5	Organized Crime - Part II (NCDA)	Houston, Texas
17 - 20	Virginia Commonwealth Attorneys Institute	Hot Springs, Virginia
22 - 26	National District Attorneys Association/National Association of County Officials--The County Official: Corporate/Civil Functions	Chicago, Illinois
22 - 26	Trial Techniques (NCDA)	Boston, Massachusetts

29 - May 4	Prosecutor's Office Administrator Course - Part III (NCDA)	Houston, Texas
	Kansas County & District Attorneys Association District Attorneys Seminar	Wichita, Kansas
	Louisiana District Attorneys Association Secretaries Conference	New Orleans, Louisiana

MAY 1979

20 - 24	National District Attorneys Association Board of Directors Spring Meeting	Hilton Head, South Carol
20 - 25	National District Attorneys Association National Secretaries & IV-D Non-Support	Memphis, Tennessee
	Kansas County & District Attorneys Association Summer Intern Orientation	Topeka, Kansas
	New York State--Criminal Law Problems II	New York, New York
	New York State--Criminal Law Problems II	Albany, New York
	Louisiana District Attorneys Association LSA Conference	Baton Rouge, Louisiana

JUNE 1979

7 - 9	Oklahoma District Attorneys Training Coordination Council--Trial Techniques Seminar	Tulsa, Oklahoma
10 - 16	Executive Prosecutor Course (NCDA)	Houston, Texas
21 - 24	Ohio Prosecuting Attorneys Association Summer Workshop	Cedar Point, Ohio
	Joint Kansas Bar Association/Kansas County & District Attorneys Association Seminar	Salina, Kansas,
	Washington State Association of Prosecuting Attorneys Summer Meeting	To Be Announced

JULY 1979

8 - 12	Pennsylvania District Attorneys Association Annual Meeting	To Be Announced
8 - 28	Career Prosecutor Course (NCDA)	Houston, Texas
11 - 14	Oregon District Attorneys Association Summer Conference	Sunriver, Oregon
29 - Aug 3	National District Attorneys Association Summer Conference	Mackinac Island, Michig

AUGUST 1979

2 - 4	Idaho Prosecuting Attorneys Association Training Seminar	McCall, Idaho
2 - 4	Virginia Association of Commonwealth Attorneys	Virginia Beach, Virgini

8 - 11

Louisiana District Attorneys Association
4th Annual Homicide Seminar

New Orleans, Louisiana

Kansas County & District Attorneys Association
Tri-State Regional (Oklahoma-Kansas-Arkansas)

Lake of the Ozarks, Mo.

New York State--Basic Course for Prosecutors IV

New York, New York

New York State--Basic Course for Prosecutors IV

Albany, New York

SEPTEMBER 1979

Kansas County & District Attorneys Association
New Assistants Seminar

Topeka, Kansas

National District Attorneys Association
Forensic Science Conference

To Be Announced

OCTOBER 1979

8 - 9

Nebraska County Attorneys Association
Annual Meeting

Omaha, Nebraska

Washington Association of County Officials
Fall Meeting

To Be Announced

Kansas County & District Attorneys Association
District Attorneys Seminar

Lawrence, Kansas

Kansas County & District Attorneys Association
District Attorneys Seminar

Wichita, Kansas

New York State - Recent Developments in the
Criminal Law - 1979

New York, New York

NOVEMBER 1979

11- 13

Kansas County & District Attorneys Association
KOC Institute

Wichita, Kansas

DECEMBER 1979

6 - 8

Ohio Prosecuting Attorneys Association
Annual Meeting

Columbus, Ohio

Washington State Association of Prosecuting Attorneys
Winter Meeting

Seattle, Washington

